

AMENDED IN ASSEMBLY MAY 14, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

**ASSEMBLY BILL**

**No. 359**

**Introduced by Assembly Member Koretz**  
**(Coauthors: Assembly Members Chavez and Maddox)**

February 11, 2003

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An act to amend Section ~~3302 of the Government Code~~ 70 of the Penal Code, relating to public safety officers.

LEGISLATIVE COUNSEL'S DIGEST

AB 359, as amended, Koretz. Public safety officers: off-duty employment.

*Existing law provides that every executive or ministerial officer, employee, or appointee of the State of California, or any county or city therein, or any political subdivision thereof, who knowingly asks, receives, or agrees to receive any emolument, gratuity, or reward, or any promise thereof excepting such as may be authorized by law for doing an official act, is guilty of a misdemeanor. Existing law exempts from that offense, certain employment by a peace officer as a security guard or patrolman while off duty, as specified.*

*This bill would additionally exempt from the scope of that offense, other employment by a peace officer while off duty, and would, subject to exceptions, provide that a peace officer may not be prohibited from engaging in other employment while off duty, as specified.*

~~Under existing law, no public safety officer shall be prohibited from engaging, or be coerced or required to engage, in political activity. In addition, no public safety officer shall be prohibited from seeking~~

election to, or serving as a member of, the governing board of a school district.

~~This bill would require that no public safety officer be prohibited from working off duty, except pursuant to written regulations adopted by the employing public safety department. This bill would prohibit consent to work off duty from being unreasonably withheld by the public safety officer's employer.~~

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1    ~~SECTION 1. Section 3302 of the Government Code is~~  
2    *SECTION 1. Section 70 of the Penal Code is amended to read:*  
3    70. (a) Every executive or ministerial officer, employee, or  
4    appointee of the State of California, or any county or city therein,  
5    or any political subdivision thereof, who knowingly asks,  
6    receives, or agrees to receive any emolument, gratuity, or reward,  
7    or any promise thereof excepting such as may be authorized by law  
8    for doing an official act, is guilty of a misdemeanor.  
9    (b) This section does not prohibit deputy registrars of voters  
10   from receiving compensation when authorized by local ordinance  
11   from any candidate, political committee, or statewide political  
12   organization for securing the registration of voters.  
13   (c) (1) Nothing in this section precludes a peace officer, as  
14   defined in Chapter 4.5 (commencing with Section 830) of Title 3  
15   of Part 2, from engaging in, or being employed in, casual or  
16   part-time employment as a private security guard or patrolman for  
17   a public entity while off duty from his or her principal employment  
18   and outside his or her regular employment as a peace officer of a  
19   state or local agency, and exercising the powers of a peace officer  
20   concurrently with that employment, provided that the peace  
21   officer is in a police uniform and is subject to reasonable rules and  
22   regulations of the agency for which he or she is a peace officer.  
23   Notwithstanding the above provisions, any and all civil and  
24   criminal liability arising out of the secondary employment of any  
25   peace officer pursuant to this subdivision shall be borne by the  
26   officer's secondary employer.  
27   (2) It is the intent of the Legislature by this subdivision to  
28   abrogate the holdings in *People v. Corey*, 21 Cal.3d 738, and



1 Cervantez v. J.C. Penney Co., 24 Cal.3d 579, to reinstate prior  
2 judicial interpretations of this section as they relate to criminal  
3 sanctions for battery on peace officers who are employed, on a  
4 part-time or casual basis, by a public entity, while wearing a police  
5 uniform as private security guards or patrolmen, and to allow the  
6 exercise of peace officer powers concurrently with that  
7 employment.

8 (d) (1) Nothing in this section precludes a peace officer, as  
9 defined in Chapter 4.5 (commencing with Section 830) of Title 3  
10 of Part 2, from engaging in, or being employed in, casual or  
11 part-time employment as a private security guard or patrolman by  
12 a private employer while off duty from his or her principal  
13 employment and outside his or her regular employment as a peace  
14 officer, and exercising the powers of a peace officer concurrently  
15 with that employment, provided that all of the following are true:

16 ~~(1)~~

17 (A) The peace officer is in his or her police uniform.

18 ~~(2)~~

19 (B) The casual or part-time employment as a private security  
20 guard or patrolman is approved by the county board of supervisors  
21 with jurisdiction over the principal employer or by the board's  
22 designee or by the city council with jurisdiction over the principal  
23 employer or by the council's designee.

24 ~~(3)~~

25 (C) The wearing of uniforms and equipment is approved by the  
26 principal employer.

27 ~~(4)~~

28 (D) The peace officer is subject to reasonable rules and  
29 regulations of the agency for which he or she is a peace officer.

30 (2) Notwithstanding the above provisions, a peace officer  
31 while off duty from his or her principal employment and outside  
32 his or her regular employment as a peace officer of a state or local  
33 agency shall not exercise the powers of a police officer if employed  
34 by a private employer as a security guard during a strike, lockout,  
35 picketing, or other physical demonstration of a labor dispute at the  
36 site of the strike, lockout, picketing, or other physical  
37 demonstration of a labor dispute. The issue of whether or not  
38 casual or part-time employment as a private security guard or  
39 patrolman pursuant to this subdivision is to be approved shall not  
40 be a subject for collective bargaining. Any and all civil and

1 criminal liability arising out of the secondary employment of any  
2 peace officer pursuant to this subdivision shall be borne by the  
3 officer's principal employer. The principal employer shall require  
4 the secondary employer to enter into an indemnity agreement as  
5 a condition of approving casual or part-time employment pursuant  
6 to this subdivision.

7 (3) It is the intent of the Legislature by this subdivision to  
8 abrogate the holdings in *People v. Corey*, 21 Cal. 3d 738, and  
9 *Cervantez v. J. C. Penney Co.*, 24 Cal. 3d 579, to reinstate prior  
10 judicial interpretations of this section as they relate to criminal  
11 sanctions for battery on peace officers who are employed, on a  
12 part-time or casual basis, while wearing a police uniform approved  
13 by the principal employer, as private security guards or patrolmen,  
14 and to allow the exercise of peace officer powers concurrently with  
15 that employment.

16 *(e) (1) Nothing in this section precludes a peace officer, as*  
17 *defined in Chapter 4.5 (commencing with Section 830) of Title 3*  
18 *of Part 2, from engaging in, or being employed in, other*  
19 *employment while off duty from his or her principal employment*  
20 *and outside his or her regular employment as a peace officer of a*  
21 *state or local agency.*

22 *(2) Subject to subdivisions (c) and (d), and except as provided*  
23 *by written regulations or policies adopted by the employing state*  
24 *or local agency, or pursuant to an agreement between the*  
25 *employing state or local agency and a recognized employee*  
26 *organization representing the peace officer, no peace officer shall*  
27 *be prohibited from engaging in, or being employed in, other*  
28 *employment while off duty from his or her principal employment*  
29 *and outside his or her regular employment as a peace officer of a*  
30 *state or local agency.*

31 *(3) If an employer withholds consent to allow a peace officer*  
32 *to engage in or be employed in other employment while off duty,*  
33 *the employer shall, at the time of denial, provide the reasons for*  
34 *denial in writing to the peace officer.*

35 ~~amended to read:~~

36 ~~3302. (a) Except as otherwise provided by law, or whenever~~  
37 ~~on duty or in uniform, no public safety officer shall be prohibited~~  
38 ~~from engaging, or be coerced or required to engage, in political~~  
39 ~~activity.~~

1     ~~(b) No public safety officer shall be prohibited from seeking~~  
2     ~~election to, or serving as a member of, the governing board of a~~  
3     ~~school district.~~

4     ~~(c) No public safety officer shall be prohibited from working~~  
5     ~~off-duty, except pursuant to written regulations adopted by the~~  
6     ~~employing public safety department. Consent to work off-duty~~  
7     ~~may not be unreasonably withheld by the public safety officer's~~  
8     ~~employer.~~

